

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05cr340

UNITED STATES OF AMERICA)	
)	
v.)	<u>ORDER</u>
)	
ELIJAH JUNIOR SIMMS)	
_____)	


THIS MATTER is before this Court upon the defendant's response (Doc. No. 67) to the Court's Order (Doc. No. 66) requiring him to elect whether to construe his motion for a new trial (Doc. No. 65) as a petition to vacate pursuant to 28 U.S.C. § 2255.

In the instant response, the defendant requests that the attached motion be considered under § 2255. (Doc. No. 67: Response at 1). That attached motion is substantially similar as the previously filed motion for a new trial (Doc. No. 65).

IT IS, THEREFORE, ORDERED that the Court will construe Doc. No. 67 as a Petition to Vacate under § 2255. The Clerk's Office is directed to open a civil case based on Doc. No. 67 and to term Doc. No. 65 as moot.

The Clerk is directed to send copies of this Order and Notice to the parties, including Elijah Junior Simms, Reg. No. 20614-058, FCI Butner Low, Federal Correctional Institution, P.O. Box 999, Butner, North Carolina, 27509.

Signed: November 17, 2009



Robert J. Conrad, Jr.
Chief United States District Judge

